

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Frontiersvision Operating Partners, L.P.)	CSR-5756-A
)	
Martha's Vineyard Cablevision, L.P.)	CSR-5774-A
Adelphia Cablevision Corporation)	
Chelsea Communications, LLC)	
Adelphia Cablevision Associates, L.P.)	
)	
Requests for Modification of the Boston, Massachusetts DMA)	
)	
Educational Public TV Corporation)	CSR-5779-M
v.)	
Martha's Vineyard Cablevision, L.P.)	
Adelphia Cablevision Corporation)	
Chelsea Communications, LLC)	
Adelphia Cablevision Associates, L.P.)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: May 14, 2002

Released: May 20, 2002

By the Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Frontiersvision Operating Partners, L.P. ("Frontiersvision") and Martha's Vineyard Cablevision, L.P., Adelphia Cablevision Corporation, Chelsea Communications, LLC and Adelphia Cablevision Associates, L.P. ("Adelphia") have filed the above-captioned petitions for special relief seeking to modify the Boston, Massachusetts designated market area ("DMA") with respect to television broadcast station WYDN, Worcester, Massachusetts ("WYDN"). Specifically, Frontiersvision and Adelphia request that WYDN be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from the communities served by their respective cable systems.¹ WYDN filed a motion to consolidate the opposition due dates of these petitions to that of the more recently filed petition and subsequently filed a consolidated opposition. Frontiersvision and Adelphia filed a consolidated reply. In an associated filing, WYDN filed a must carry complaint against Adelphia for its failure to carry

¹Frontiersvision serves the communities of Gloucester, Rockport, Essex, Manchester, Amesbury, Salisbury, Merrimac and South Hampton, Massachusetts. Adelphia serves the communities of Plymouth, Rockland, Marshfield, Plympton, Bourne, Pembroke, Sandwich, Halifax, Abington, Duxbury, Kingston, Carver, Falmouth, Tisbury, Oak Bluffs, Edgartown, Chilmark, Aquinnah and West Tisbury, Massachusetts.

WYDN on the nineteen communities served by its cable systems. An opposition to this complaint was filed on behalf of Adelphia to which WYDN replied. We are consolidating these cases in order to determine the signal carriage rights of WYDN on the cable systems in question.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Broadcast Signal Carriage Issues (“*Must Carry Order*”), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.² A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.⁴

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station’s television market to better effectuate the purposes of this section.⁵

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or

²8 FCC Rcd 2965, 2976-1977 (1993).

³Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. *See Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999)(“*Modification Final Report and Order*”).

⁴For a more complete description of how counties are allocated, *see* Nielsen Media Research’s *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵47 U.S.C. §534(h)(1)(C).

provides carriage or coverage of sporting and other events of interest to the community;

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁶

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

* * * *

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.⁷

With respect to deletions of communities from a station's market, the legislative history of the provision states that:

The provisions of [this subsection] reflect a recognition that the Commission may conclude that a community within a station's [DMA] may be so far removed from the station that it cannot be deemed part of the station's market. It is not the Committee's intention that these provisions be used by cable systems to manipulate their carriage obligations to avoid compliance with the objectives of this section. Further, this section is not intended to permit a cable system to discriminate among several stations licensed to the same community. Unless a cable system can point to particularized evidence that its community is not part of one station's market, it should not be permitted to single out individual stations serving the same area and request that the cable system's community be deleted from the station's television market.⁸

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the

⁶*Id.*

⁷H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

⁸H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

market.⁹

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(A) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(B) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relating to the service areas.

Note: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.¹⁰

(C) Available data on shopping and labor patterns in the local market.

(D) Television station programming information derived from station logs or the local edition of the television guide.

(E) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(F) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.¹¹

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* also provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

⁹*Must Carry Order*, 8 FCC Rcd 2965, 2977 n. 139.

¹⁰The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

¹¹47 C.F.R. §76.59(b).

III. DISCUSSION

A. Market Modifications

5. The issue before us is whether to grant Frontiersvision's and Adelphia's requests to exclude television station WYDN from mandatory carriage on their respective cable systems. Frontiersvision's cable systems are located in Essex County, Massachusetts and Rockingham County, New Hampshire. Adelphia's cable systems are located in the Massachusetts counties of Barnstable, Plymouth and Dukes. All of these counties are deemed to be part of the Boston, Massachusetts DMA. WYDN is licensed to Worcester, Massachusetts, which is also considered to be part of the Boston DMA. Considering all of the relevant factual circumstances in the record, we believe that the deletion petitions before us appear to be legitimate requests to redraw DMA boundaries to make them congruous with market realities. We will summarize each petition in turn.

6. In support of their petitions, both Frontiersvision and Adelphia state that WYDN has no record of historic carriage on any of their respective cable systems.¹² Petitioners argue that this has primarily been due to the fact that WYDN is unable to deliver a signal of requisite quality to the cable systems' principal headends and thus has not qualified as a "local commercial television station" for must carry purposes.¹³ Frontiersvision and Adelphia point out that, to their knowledge, as confirmed by the *Television and Cable Factbook*, no other nearby cable systems carry WYDN, including some systems serving communities even closer to Worcester than the subject communities.¹⁴

7. Frontiersvision and Adelphia state that not only does WYDN's predicted Grade B contour fail to encompass any of the communities at issue, but the station is geographically remote at from 58 to 69 miles distant from Frontiersvision's communities and 50 to 90 miles distant from Adelphia's communities.¹⁵ Petitioners maintain that such distances attenuate any ties, especially commercial ties, between the station and the communities and are comparable to the distances found in previous Bureau decisions that justified exclusion.¹⁶ In addition, petitioners point out that their communities are also separated from WYDN by geographic features. Frontiersvision states that its communities are located at the extreme eastern end and northeastern corner of the large Boston DMA and one of the communities served is located in New Hampshire.¹⁷ Adelphia states that not only are its communities separated from Worcester, WYDN's city of license, by the vast distance across the state of Massachusetts, but also by several bodies of water – Buzzards Bay, Vineyard Sound and Assonet Bay.¹⁸ Petitioners argue that both the Bureau and Commission have repeatedly found that state borders, as well as natural boundaries, such as bodies of water, are factors that further separate communities from television stations.¹⁹ Petitioners assert that this geographic attenuation results in a lack of business and

¹²Frontiersvision Petition at Exhibit B; Adelphia Petition at Exhibit B.

¹³*Id.* at 3.

¹⁴*Id.* at Exhibit D.

¹⁵*Id.* at 5-6 and Exhibits E and F.

¹⁶See e.g., *Greater Worcester Cablevision, Inc.*, 13 FCC Rcd 22220 (1998)(39-70 miles); *Mid-Hudson Cablevision, Inc.*, 15 FCC Rcd 5011 (2000)(31-70 miles); *Blue Ridge Cable Technologies, Inc.*, 14 FCC Rcd 2320 (1999)(43 miles).

¹⁷Frontiersvision Petition at 6.

¹⁸Adelphia Petition at 7.

¹⁹See e.g., *Adelphia Cablevision Associates, L.P.*, 14 FCC Rcd 7686 (1999); *Rifkin/Narrangansett South Florida CATV Limited Partnership, d/b/a Gold Coast Cablevision*, 11 FCC Rcd 21090 (1996), *recon. denied*, 14
(continued...)

economic connections between WYDN's market and the cable communities in question and there is no record of advertisements or promotions by WYDN in the areas at issue through any medium.²⁰

8. Frontiersvision and Adelphia further argue that WYDN does not offer any local news, sports or community interest programming targeted to any community, let alone the communities at issue, but rather offers a generic religious programming affiliated with the Daystar Network.²¹ Petitioners note that the Commission has rejected general interest programming as insufficient to satisfy the DMA local programming factor.²² In any event, petitioners state that they carry numerous other market stations which provide an abundance of local coverage to the communities.²³ Finally, petitioners state that, according to a marketing and research consulting firm, WYDN has no viewership in the communities.²⁴ WYDN is also not listed in the editions of *TV Guide* available to Frontiersvision's and Adelphia's subscribers.²⁵

9. In opposition, WYDN argues that it should be treated as a local commercial station for must carry purposes, pursuant to Section 76.56(b) of the Commission rules, and therefore it is entitled to carriage on all cable systems within its DMA as long as the requisite signal strength is provided.²⁶ WYDN has stated that it is a "non-qualified" NCE for must carry purposes because it is not eligible to receive a community service grant from the Corporation for Public Broadcasting ("CPB").²⁷

10. WYDN argues that petitioners' "overabundance" of attachments and documentation to demonstrate WYDN's lack of historic carriage is unnecessary when Commission records show that WYDN did not commence operation until mid-1999 and only improved its signal at the end of 2000.²⁸ In any event, WYDN states that it never previously sought carriage on any of the relevant cable systems.²⁹ WYDN states that the fact that it does not provide a Grade B signal to the communities is irrelevant in this instance because, while Grade B coverage is significant in the case of qualified NCE stations, the requirement for other stations is only that a good quality signal be provided, by whatever means.³⁰ WYDN states that it is willing and able to comply with this requirement, at its own expense, where needed.

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FCC Rcd 13788 (1999); *Time Warner New York City Cable Group*, 11 FCC Rcd 6528 (1996); *Time Warner New York City Cable Group*, 12 FCC Rcd 13094 (1996), *recon. denied*, 12 FCC Rcd 12262 (1997); *Comcast of Central New Jersey*, 13 FCC Rcd 1656 (1997).

²⁰Frontiersvision Petition at 7-8 and Exhibit H; Adelphia Petition at 7-9 and Exhibit H.

²¹Frontiersvision Petition at 9; Adelphia Petition at 10..

²²*See Comcast Cablevision*, 15 FCC Rcd 15105 (2000).

²³Frontiersvision Petition at 11-12 and Exhibits J-M..

²⁴*Id.* at Exhibit N.

²⁵*Id.*

²⁶Opposition at 2. *See also* 47 C.F.R. §76.56(b).

²⁷WYDN Letter at 1.

²⁸Opposition at 3.

²⁹*Id.*

³⁰*Id.*

11. WYDN asserts that, despite the substantial amount of argument petitioners put forth with regard to distance, both geographic and political, a majority of the subject communities sought for inclusion receive another Worcester television station, WUNI (Channel 27), a Univision network Spanish-language station.³¹ WYDN states that the distances between Worcester and the subject communities are the same for both stations.³² WYDN maintains that petitioners' carriage of another Worcester station demonstrates that Worcester is not totally outside the Boston market, as petitioners suggest. WYDN notes that in *Fouce Amusement Enterprises, Inc.*, the Commission found it significant that the cable system carried other stations from the same area, not even the same community, and determined that singling out one station was discriminatory.³³ In this instance, WYDN states, the other station carried is licensed to the same community as the one sought for exclusion. WYDN points out that it is carried, or will soon be carried, on cable systems serving other communities in the same counties where petitioners' communities are located.³⁴ Also, beginning January 1, 2002, WYDN states that it will be carried on DirecTV and Dish Network in the Boston DMA.³⁵ WYDN argues that carriage on other nearby systems not only demonstrates that not all cable operators feel that Worcester is so far removed from their market, but is evidence of petitioners' evident wish to discriminate against WYDN.

12. With regard to programming, WYDN maintains that, as the only Christian TV station in the Boston market, it offers viewers programming that is far different from that of any other station and which is at least of equal interest to viewers as a Spanish-language station.³⁶ Although WYDN concedes that it does not achieve any viewership, according to Nielsen, it points out that it is still a new station that has provided a signal in the area for less than a year. WYDN states that the Commission has recognized that it can take several years for a station to establish viewing patterns.³⁷ Moreover, WYDN notes that a lack of viewership was found unpersuasive in *North Central Cable Communications, Inc. dba Meredith Cable*, where cable penetration ranged from 41 percent to 51 percent.³⁸ WYDN states that, in the Boston market, cable controls over 80 percent of the homes while DBS serves approximately another 5 percent.³⁹ Since over-the-air viewership is so low, WYDN maintains that there is little likelihood that its viewership numbers will increase without cable carriage.

13. In a consolidated reply, Frontiersvision and Adelpia argue that WYDN fails to refute the facts presented in their modification petitions. Instead, petitioners note, WYDN argues against the application of several statutory factors, such as lack of Grade B coverage and viewership, and ignores other factors, such as geographic barriers and a lack of nexus between the communities and the station. In response to WYDN's contention that Frontiersvision and Adelpia limited their arguments to the four statutory modification factors, petitioners assert that they addressed other non-statutory factors as well,

³¹*Id.*

³²*Id.*

³³10 FCC Rcd 668 (1995).

³⁴Opposition at 4. WYDN states that it is currently carried by AT&T in the Plymouth County communities of Foxboro/Bridgewater, Middleboro, Scituate, Brocton and Marion; in the Essex County communities of Haverhill, Salem, Malden, North Andover, Saugus, Danvers, Andover, Methuen, Newburyport, Peabody, Lynn, Lawrence and Beverly; and will be carried soon in the Barnstable County communities of Mashpee, Orleans and Barnstable.

³⁵*Id.*

³⁶*Id.* at 5.

³⁷See *DeSoto Broadcasting, Inc.*, 10 FCC Rcd 4491 (1995).

³⁸10 FCC Rcd 4381 (1995) ("*Meredith Cable*").

³⁹Opposition at 5.

including the lack of business and economic connections between WYDN and the communities.⁴⁰ Petitioners argue that WYDN did not offer any evidence or suggest any other factors in its opposition that the Commission should examine in this instance.⁴¹ In any event, petitioners assert that, despite WYDN's attempt to downgrade their importance, the four market modification factors enumerated in the statute are of primary relevance in any modification proceeding.⁴²

14. Petitioners argue that WYDN's assertion that it had never previously sought carriage on the subject cable systems prior to the end of 2000, despite being on-the-air for a year and a half, merely emphasizes the lack of local nexus between the subject communities and WYDN. Petitioners state that WYDN did not claim that it specifically served any of the communities with an off-air signal or delivered specifically-targeted programming.⁴³ While WYDN points to other communities where there are plans for its carriage, petitioners argue that the Commission has ruled that a station's future plans are too speculative to count in its favor in a modification proceeding.⁴⁴ With regard to the communities where WYDN states it is currently being carried, petitioners maintain that they are so few as to be *de minimis* and, in any event, are all located closer to Worcester than are the communities at issue.⁴⁵

15. Petitioners state further that WYDN's arguments regarding its lack of Grade B coverage are misplaced. While it may be true that in order to qualify for DMA carriage WYDN's primary obligation is to provide a good quality signal, petitioners point out that in a modification proceeding the issue is not WYDN's signal quality but its local connection to the communities at issue. Petitioners argue that the Commission has repeatedly held that a lack of Grade B coverage is an important factor in the market modification analysis because it suggests a lack of local connection, regardless of whether the station delivers or offers to deliver a good quality signal.⁴⁶ Petitioners maintain that this is even more true here where WYDN is a non-qualified NCE station seeking the same DMA-wide carriage reserved for commercial stations, rather than the more limited Grade B or 50-mile carriage reserved for qualified NCE stations.⁴⁷

16. Petitioners assert that WYDN's argument with regard to the carriage of WUNI in some of the communities is both incorrect and irrelevant.⁴⁸ Petitioners maintain that WUNI is not similarly-situated to WYDN for a number of reasons. First, unlike WYDN, whose transmitter is located some 7 miles northwest of Worcester, WUNI's transmitter is located some 7 miles northeast of Worcester or approximately 10 miles closer to the communities.⁴⁹ In contrast, in *Fouce Amusement* the station not

⁴⁰Reply at 4.

⁴¹*Id.*

⁴²See *Mid-Hudson Cablevision, Inc.*, 15 FCC Rcd 5011 (2000).

⁴³Reply at 6.

⁴⁴See *Greater Worcester Cablevision, Inc., et al.*, 13 FCC Rcd at 22228.

⁴⁵Reply at 6. Petitioners note that such carriage appears to be so recent that it cannot count as "historic carriage."

⁴⁶See e.g., *Greater Worcester Cablevision, Inc., et al.*, 13 FCC at 22228; *Adelphia Cable Partners, L.P.*, 13 FCC Rcd 4047, 4057 (1997), *recon. denied*, 14 FCC Rcd 13788; *Dynamic Cablevision of Florida, Ltd., et al.*, 11 FCC Rcd 9880, 9890, n. 37 (1996), *recon. denied*, 14 FCC Rcd 13783 (1999).

⁴⁷Reply at 9.

⁴⁸Reply at 10.

⁴⁹*Id.* at 11.

carried was closer to the communities at issue than were the stations from that area that were carried.⁵⁰ Second, petitioners state that unlike WYDN, WUNI has a long history of carriage on the Gloucester, Amesbury, Plymouth and Pembroke systems.⁵¹ WUNI has also been historically carried on other nearby cable systems while WYDN has not. Third, petitioners indicate that WUNI provides Grade B coverage to the Pembroke system communities, some of the Gloucester and Amesbury system communities and many of the Plymouth system communities with the remainder on the fringe.⁵² Fourth, WUNI has historically delivered a good quality signal to the systems on which it is carried.⁵³ And fifth, WUNI is listed in the local newspapers and *TV Guide* publications serving the communities.⁵⁴

17. Petitioners argue that WYDN failed to provide any specific examples of programming that would refute petitioners' argument that the station fails to target the subject communities, but instead relies solely on its generic religious programming. Petitioners assert that the religious programming which WYDN airs is designed for a national audience and would therefore have the same appeal in many areas of the country.⁵⁵ Petitioners maintain that, for market modification cases, the Commission requires that the station air programming that is specifically targeted to the needs of each individual community, with an emphasis on news, sporting events and coverage of local events.⁵⁶ Petitioners state that apparently WYDN is claiming DMA-wide carriage based solely on its generic religious programming. Petitioners state that both Congress and the Commission have recognized that "the broadcast signal carriage rules were not intended to transform a station with a restricted market and service area into a regional 'super station' that must be automatically carried in every single community in an ADI"⁵⁷

18. In response to WYDN's argument that the viewership factor should not apply because it is a new station, petitioners maintain that even if WYDN is considered relatively new, it still cannot be exempted from analysis of the criterion.⁵⁸ Petitioners state that the Bureau has repeatedly concluded that "[t]he fact that a station is new or of specialized appeal does not mean that its logical market area is without limits or that it should be exempt from the Section 614(h) market modification process."⁵⁹ Moreover, petitioners assert that placing the blame for its lack of viewership on the cable systems is misplaced since it is obvious that WYDN's low viewership is a direct result of its distance and lack of connection to the communities involved.⁶⁰ In addition, petitioners state that WYDN's contention that its viewership will not increase unless it is carried reverses the demands of market modification process which requires that a station's current viewership be examined in order to determine whether the station is

⁵⁰*Id.*

⁵¹Frontiersvision Petition at Exhibit B.; Adelphia Petition at Exhibit B. Petitioners note that WUNI is not carried on the Tisbury system.

⁵²Reply at 12.

⁵³*Id.*

⁵⁴*Id.*

⁵⁵*Id.* at 15.

⁵⁶*Id.*

⁵⁷*Gold Coast Cablevision*, 11 FCC Rcd at 21103.

⁵⁸Reply at 19.

⁵⁹*See MediaOne of Los Angeles, Inc.*, 15 FCC Rcd 19386, 19396 (2001).

⁶⁰Reply at 19.

local and thus entitled to carriage.⁶¹

19. As an initial matter, we must first determine whether WYDN is a commercial or noncommercial station for purposes of the Commission's must carry rules. Different carriage requirements apply depending on the station.⁶² In our review of the petitions herein, we note that both Frontiersvision and Adelphia include as Exhibit A to their petitions a September 4, 2001 letter from WYDN that stated that although WYDN was licensed as a noncommercial television station, it was a "non-qualified NCE station" because it did not meet the qualification criteria established pursuant to Section 76.55(a) of the Commission's rules.⁶³ WYDN stated that it therefore sought carriage pursuant to the provisions of Section 76.56(b) of the Commission's rules as a commercial television station and, as a result, its status as a must carry station became subject to modification.⁶⁴ Because neither the petitioners nor WYDN provided more detailed information regarding this issue, the Bureau sought information from WYDN to clarify why it considers itself to be a "non-qualified" NCE station. WYDN stated that it was "non-qualified" because it met only one of the two requirements under Section 76.55(a) – that it operates on a channel reserved for NCE operation and is licensed as an NCE station by the Commission.⁶⁵ However, WYDN stated that it did not meet the second requirement because it was advised that CPB ceased making new community service grants to television stations in 1995 and WYDN, which went on the air in 1999, is not currently eligible for a grant. Petitioners disagree that WYDN's letter demonstrates that it is a "non-qualified" NCE station, arguing that the statutory provision under Section 615(l)(1)(A)(ii) of the Act only requires that the station's licensee be "eligible" to receive the CPB grant, not that it actually receives such grants.⁶⁶ Petitioners maintain that WYDN has made no showing that it does not meet such criteria nor does make any showing that it is unable to meet any of the eligibility factors listed in Section 396(k)(8)(A) of the Act.⁶⁷ Finally, petitioners point out that, in contravention of the statute, WYDN discusses the station's eligibility and not the licensee's as required.

20. We agree with WYDN that it is a "non-qualified" NCE station. Section 615(l)(1)(A)(ii) of the statute sets forth as one of its qualifications that a licensee be eligible to receive a community service grant. While WYDN may have been eligible if CPB had not ceased making such grants in 1995, it is ineligible now. As a result, it is entitled to seek carriage as a "non-qualified" NCE station pursuant to must carry regulations governing commercial stations.

21. With respect to the mandatory statutory criteria, we have reviewed the information provided by Frontiersvision and Adelphia in the context of their requests. An analysis of this evidence, as

⁶¹*Id.* at 20.

⁶²See 47 C.F.R. §76.56(a) and (b).

⁶³Section 76.55(a) has a dual requirement that defines a "qualified" NCE station as a station that is licensed by the Commission as an NCE station, and that has a licensee eligible to receive a community service grant from the Corporation for Public Broadcasting ("CPB"). See 47 C.F.R. §76.55(a). Section 76.55(a)(3) provides that the station may be on a reserved or non-reserved channel. See 47 C.F.R. §76.55(a)(3).

⁶⁴47 C.F.R. §76.56(b). See also *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 9 FCC Rcd 6723, 6730 (1994) ("*Must Carry Reconsideration*") ("Consistent with the language of the 1992 Cable Act, we determine that NCE stations which are not 'qualified' NCE stations for must-carry purposes may assert must-carry rights under Section 614 within their local markets, just like any other broadcast station.").

⁶⁵WYDN Letter at 1.

⁶⁶47 U.S.C. §535(l)(1)(A)(ii).

⁶⁷47 U.S.C. §396(k)(8)(A).

it relates to each factor, is provided below.

22. **Historic Carriage.** Despite being on the air for approximately three years, WYDN has no history of carriage on Frontiersvision's or Adelphia's cable systems. We note, however, that both Frontiersvision and Adelphia currently carry another station, WUNI, channel 27, licensed to the same community as WYDN, Worcester, Massachusetts, on their respective systems. The statute specifically instructs the Commission to take into consideration other stations carried by cable operators from the same city of license in its deliberations when considering the existence of historic carriage. We do not believe, however, that this one factor overwhelms WYDN's failure to meet the other statutory criteria.

23. To support its contention that petitioners' market modification petitions should be denied, WYDN cites the Bureau's decision in *Fouce Amusement*. It is true that in *Fouce Amusement*, the Bureau denied a petitioner's request to exclude a station when it found that a cable system was carrying other stations from the same area.⁶⁸ However, in *Fouce Amusement*, unlike the situation here, the station in question was not only closer to the cable system than were other area stations being carried but also placed a City Grade contour over the communities at issue and was only 30 miles distant from the subject cable system. In contrast, while both WYDN and WUNI are licensed to the city of Worcester, WUNI's transmitter is nearly 10 miles closer to the subject communities and WYDN, unlike WUNI, provides no Grade B coverage over the communities at issue. In addition, it appears from our records that WUNI is the only Spanish-language station serving the Boston DMA and, as such, its programming may have significant interest to the petitioners' subscribers that may account for its carriage outside of its natural market. The signal of television channel 27, Worcester (formerly WSMW-TV) has also historically been sought after for cable carriage in communities clearly outside of the Boston market, suggesting that its historical carriage may be as much related to its general appeal as to a specific market connection.⁶⁹

24. **Grade B Coverage/Local Service.** A station's local service to cable communities is one of the relevant factors to consider. It is not influenced by the type or age of the station involved or historical carriage. A station's broadcast of local programming, which has a distinct nexus to the cable communities, is evidence of local service.⁷⁰ Service may also be measured through geographic means, that is by examining the distance between the station and the cable communities subject to the deletion request and taking into account natural phenomena such as waterways, mountains and valleys which tend to separate communities.⁷¹ Finally, a station's Grade A or Grade B contour coverage is an additional indicator of local service and we will weigh the presence or absence of such technical coverage accordingly.⁷² In the instant proceeding, WYDN does not satisfy any of the local coverage elements we

⁶⁸10 FCC Rcd at 671.

⁶⁹See e.g., *Video Enterprises, Inc.*, 52 FCC 2d 394 (1975) (carriage in the Hartford-New Haven-New Britain-Waterbury market); *Derry Cable Co.*, 56 FCC 2d 329 (1975) (carriage in Londonderry, Vermont); *Eastern Connecticut Cable Television*, 51 FCC 2d 921 (1975) (carriage in New London, Connecticut); *Pease Cable TV*, 47 FCC 2d 1141 (1974) (carriage in Manchester, New Hampshire); *Sonic TV Systems*, 47 FCC 2d 1214 (1974) (carriage in New York market).

⁷⁰See *Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818 (1999).

⁷¹See e.g., *Cablevision Systems Corporation*, 11 FCC Rcd 6453 (1996); *Dynamic Cablevision of Florida, et al.*, 11 FCC Rcd 9880 (1996).

⁷²As a general matter, Grade B coverage demonstrates service to cable communities and serves as a measure of a station's natural economic market. See *Must Carry Order*, 8 FCC Rcd at 2977. See also *Amendment of Section 76.51 Orlando-Daytona Beach-Melbourne, and Cocoa, Florida*, Report and Order, 102 FCC 2d 1062, 1070 (1985) ("We believe that television stations actually do or logically can rely on the area within their Grade B contours for economic support.).

find important in a market modification analysis. In this case, WYDN cites no examples of any programming specifically directed to the subject communities, but instead contends that its religious format will provide valuable programming services to the residents in the subject communities. We are not convinced that such programming, while of potential general interest, is the kind that suggests that the subject communities are a particular focus of the station or are in any sense served in a manner that establishes a specific market connection. Further, the cable communities in question, which are located in the northernmost tip of Massachusetts next to New Hampshire and the southeastern peninsula and Martha's Vineyard areas of Massachusetts, fall well outside of WYDN's predicted Grade B contour and are, on average, approximately 60 miles distant. Nearly a quarter of the communities are close to 100 miles distant.

25. **Carriage of Other Stations.** We also believe that Frontiersvision's and Adelphia's carriage of other local television stations provides support for the action requested. Where a cable operator is seeking to delete a station's mandatory carriage rights in certain communities, the issue of local coverage by other stations becomes a factor to which we will give greater weight than in cases where a party is seeking to add communities. In this case, we find a number of Boston stations place grade B contours over the subject communities at issue including Boston stations WBZ (CBS), WCVB (ABC), WHDH (NBC), WGBH (PBS) and WNDS (Ind.), among others. These market facts, coupled with the distance between the cable system and WYDN, support petitioners' modification requests under the third factor.

26. **Viewership.** Nielsen's *2000 County/Coverage Study* fails to indicate any viewership for WYDN in the counties in which the subject cable communities are located. WYDN points to the high cable penetration in the Boston DMA as one reason for its low over-the-air viewership and cites the Bureau's decision in *Meredith Cable* in support. We note, however, that according to Nielsen, other Boston market stations have been able to achieve ample viewership ratings despite the high cable penetration. Moreover, it should be noted that *Meredith Cable* involved a cable system attempting to exclude a station located in the core of the market, which also provided Grade A coverage to the cable system. We find, therefore, that WYDN's lack of carriage, short time on-the-air, and its previous inability to provide a viewable signal more logically explain why its ratings are negligible in the relevant cable communities. This dearth of viewership is significant when tied with the lack of historical carriage and Grade B coverage.

27. After carefully considering each statutory factor in the context of the circumstances presented here, as well as other relevant information, we grant Frontiersvision's and Adelphia's market modification requests. Based on geography, we believe that the cable communities herein are sufficiently removed from WYDN that they ought not be deemed part of WYDN's market for mandatory carriage purposes.⁷³ According to the legislative history of the 1992 Cable Act, the use of DMA market areas is intended "to ensure that television stations be carried in the areas which they serve and which form their economic market."⁷⁴ Changes may be sought and granted by the Commission "to better effectuate the purposes" of the mandatory carriage requirements.⁷⁵ Moreover, given the evidence as to the lack of Grade B coverage, the lack of viewership in the cable communities at issue, the lack of historic carriage, and the absence of evidence indicating that WYDN provides local programming, we conclude that deletion of Frontiersvision's and Adelphia's cable communities from WYDN's market for mandatory carriage purposes effectuates the purposes of Section 614 of the Communications Act.

⁷³H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

⁷⁴*Id.* at 97.

⁷⁵47 U.S.C. §534(h).

B. Must Carry Complaint

28. In view of our decision in the instant petition, the arguments raised by WYDN and Adelphia in reference to the above-described must carry complaint are now moot. As such, WYDN's must carry complaint is dismissed.

IV. ORDERING CLAUSES

29. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended (47 U.S.C. §534) and Section 76.59 of the Commission's rules (47 C.F.R. §76.59), that the captioned petitions for special relief (CSR-5756-A), filed by Frontiersvision Operating Partners, L.P. and (CSR-5774-M), filed by filed by Martha's Vineyard Cablevision, L.P., Adelphia Cablevision Corporation, Chelsea Communications, LLC, and Adelphia Cablevision Associates, L.P. **ARE GRANTED**.

30. **IT IS FURTHER ORDERED**, that the must carry complaint filed by Educational Public TV Corporation (CSR-5779-M) **IS DISMISSED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended (47 U.S.C. §534).

31. These actions are taken pursuant to authority delegated by Section 0.283 of the Commission's rules.⁷⁶

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Murphy
Chief, Policy Division
Media Bureau

⁷⁶47 C.F.R. §0.283.